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FILED IN THE  
 UNITED STATES DISTRICT COURT  
 DISTRICT OF HAWAII

*JAN 17 2006*

*at 4 o'clock and 16 min.*  
*SUE BEITIA, CLERK*

ATTORNEY FOR: Plaintiff  
 BERT MEYER

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

BERT MEYER,	)	Civil No.: 04-00049 JMS-BMK
	)	(In Admiralty)
	)	
Plaintiff,	)	PLAINTIFF'S RESPONSE TO
v.	)	DEFENDANT MATSON NAVIGATION
	)	COMPANY, INC.'S SEPARATE AND
MATSON NAVIGATION	)	CONCISE STATEMENT OF FACTS
COMPANY, INC., and	)	IN SUPPORT OF ITS MOTION FOR
PACIFIC LIVESTOCK, INC.,	)	SUMMARY JUDGMENT
	)	
Defendants.	)	
	)	

COMES NOW PLAINTIFF BERT MEYER and submits the following Plaintiff's Response to Defendant MATSON NAVIGATION COMPANY, INC.'s Separate and Concise Statement of Facts In Support of its Motion for Summary Judgment:

Plaintiff does not dispute facts 1, 2, 5, 6, 7, 8, 9, 10, and 12.

FACT

3. It is common for container vessels that have expanded metal catwalks to have a gap between the hatch cover and the catwalk to give the crane driver some leeway in landing the very heavy and awkward hatch covers into place.
4. Matson Navigation had no knowledge of safety concerns regarding the space between the hatch covers and the catwalks.
11. Prior to slipping on the padeye, Meyer already knew that it was not safe for him to use the padeye for leverage.

EVIDENCE IN OPPOSITION

Disputed. See declarations of Bert Meyer and Capt. Robert E. Riley.

Disputed. Matson's contention that it had no knowledge of safety concerns regarding the space between the hatch covers and the catwalks is absurd. The gap violates Matson's own Safety and Pollution Manual. See Declaration of Capt. Robert E. Riley. "Congress made clear that when conditions are obviously dangerous, constructive knowledge on the part of the shipowner can be inferred, even where actual knowledge cannot be shown". Bueno v. United States, 687 F2d 318, 320 (9<sup>th</sup> cir 1983).

Disputed. See Declaration of Bert Meyer.

Dated: January 16, 2006



PRESTON EASLEY  
Attorney for Plaintiff  
BERT MEYER